



MISSOURI DEPARTMENT OF MENTAL HEALTH

DORN SCHUFFMAN, DEPARTMENT DIRECTOR



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
2.205

CHAPTER Clients Rights	SUBCHAPTER Investigation Procedures	EFFECTIVE DATE Dec. 30, 2003	NUMBER OF PAGES 7	PAGE NUMBER 1 of 7
SUBJECT Abuse and Neglect Definitions, Investigation Procedures and Penalties, State Operated Facilities		AUTHORITY Sections 630.050		HISTORY Revises DOR 2.205 Effective 7/1/96
PERSON RESPONSIBLE Deputy Director, Quality Management			Sunset Date July 1, 2007	

Purpose: Prescribes procedures for reporting, investigating and processing complaints of abuse, neglect and misuse of funds/property of department of Mental Health (department) consumers in state operated department facilities.

Application: Applies to department employees.

(1) As used in this DOR, the following terms shall mean:

(A) "Class I neglect," failure of an employee to provide reasonable or necessary services to maintain the physical and mental health of any consumer when that failure presents either imminent danger to the health, safety or welfare of a consumer, or a substantial probability that death or physical injury would result.

(B) "Class II neglect," failure of an employee to provide reasonable or necessary services to a consumer according to the individualized treatment or habilitation plan, if feasible, or according to acceptable standards of care. This includes action or behavior which may cause psychological harm to a consumer due to intimidating, causing fear or otherwise creating undue anxiety.

(C) "Complaint," allegation that class I neglect, class II neglect, misuse of funds/property, physical abuse, sexual abuse, or verbal abuse has occurred.

(D) "Consumer," individual receiving services from any facility operated by the department. Otherwise referred to as client, resident or patient.

(E) "Incident and Investigation Tracking System (iiTS)," an automated database operated by the department to collect and analyze data related to events that have actual or potential adverse outcomes for consumers in order to track department follow-up and quality improvement activities. An iiTS manual is available as a resource that provides detail regarding abuse and neglect procedures, data input, forms and sample products for use.

(F) "Misuse of funds/property," the misappropriation or conversion of a consumer's funds or property by an employee for another person's benefit.

(G) "Physical abuse,"

1. An employee purposefully beating, striking, wounding or injuring any consumer;

2. In any manner whatsoever, an employee mistreating or maltreating a consumer in a brutal or inhumane manner. Physical abuse includes handling a consumer with any more force than is reasonable for a consumer's proper control, treatment or management.

(H) "Sexual abuse," any touching, directly or through clothing by an employee of a consumer for sexual purpose or in a sexual manner. This includes but is not limited to:

1. Kissing;

2. Touching of the genitals, buttocks or breasts;



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3. Causing a consumer to touch the employee for sexual purposes;

4. Promoting or observing for sexual purpose any activity or performance involving consumers including any play, motion picture, photography, dance, or other visual or written representation;

5. Failing to intervene or attempt to stop or prevent inappropriate sexual activity or performance between consumers.

(I) "Verbal abuse," an employee using profanity or speaking in a demeaning, non-therapeutic, undignified, threatening or derogatory manner to a consumer.

(2) The department director delegates authority to heads of the facilities to perform duties and take appropriate action required under section 630.168, RSMo subject to division director or the department director's supervision. The heads of the facilities are responsible for investigation and processing of these complaints by following procedures addressed in statute, regulations and the iiTS manual. Guidance may be sought from the Office of the Attorney General or department legal counsel. The department will ensure that any changes in these references will be provided to the heads of the facilities. Directions and information regarding the procedures in the iiTS manual include:

- (A) Incident reporting;
- (B) Investigation process;
- (C) Flowcharts;
- (D) Final determination forms; and
- (E) Sample determination letters.

(3) Complaints shall be immediately reported to the head of the facility when any person including department employees, contract employees, or others subject to 630.165 RSMo who know or suspect or have received a complaint. Employees who fail to report incidents or suspected incidents of abuse, neglect or misuse of funds/property are subject to disciplinary action, criminal prosecution or both.

(A) The complaint shall be recorded on department Form 9719 iiTS - Incident Report, or may be directly entered into the iiTS database.

(B) All complaints shall be entered into the iiTS database within 24 hours or by the end of the next working day after the incident occurred, was discovered or the notification was received.

(4) The head of the facility shall immediately report to:

(A) The Division of Family Services - Child Abuse/Neglect Hotline (800-392-3738) any complaints if the alleged victim is under the age of eighteen (18).

(B) Local law enforcement official any alleged or suspected:

- 1. Sexual abuse, or;
- 2. Abuse, neglect or misuse of funds/property if the head of the facility has cause to believe that the act(s) may result in a criminal charge, or;
- 3. Abuse or neglect which results in physical injury.



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(C) The Division of Senior Services Elderly Abuse/Neglect Hotline (800-392-0210) any alleged or suspected abuse or neglect that occurs of a consumer when that consumer is away from the facility with a family member, guardian or other person and that consumer is sixty years of age or older or an eligible adult as defined in section 660.250, RSMo.

(5) After receiving a complaint, the facility head as designee of the department director shall ensure the following is completed:

(A) Notification by telephone, if possible, to the parent(s) of a minor consumer or a consumer's legal guardian(s) of the nature of any injuries and the facts and circumstances surrounding the complaint (except that the names of any employees or other consumers shall not be disclosed) and what action has been taken or planned regarding the consumer's care and investigation of the complaint. All telephone notifications shall be documented with specifics of the conversation, participants in the conversation and time and date.

(B) As soon as possible after the telephone notification or if telephone contact cannot be made, the information set out in (5)(A) shall be given to the parent of a minor consumer or consumer's legal guardian(s) in writing.

(C) If suspected sexual abuse or if there are any injuries related to suspected abuse or neglect, a physical examination of the consumer shall be performed as soon as possible by a licensed physician, or registered nurse if a physician is not available. Color photographs of any injuries shall be taken and any potential evidence shall be secured. The examination and taking of photographs will take place with consent of the consumer, or with consent of their guardian if they have a guardian. Immediate examination without consent may be necessary when there is reason to believe that a serious or life threatening injury has occurred.

(D) Within five (5) working days after receiving the complaint, acknowledge by letter the receipt of the complaint, if the person who filed the complaint is identified. The letter shall also state that an investigation has been initiated, if the investigation has been initiated.

(E) Any area where an incident has occurred and it is believed potential evidence may exist shall not have any items moved or disturbed. The area will not be disturbed until after review by authorized personnel [law enforcement, medical and emergency personnel] and with the approval of the facility head or designee in consultation with the assigned investigator.

(6) Facility employees shall cooperate fully with law enforcement, other department employees or employees from other agencies authorized to investigate a complaint. Failure to cooperate may result in dismissal of the employee.

(7) If a complaint has been made against an employee, pending completion of the investigation the facility head may place the employee on administrative leave with pay or assign the employee to a non-consumer work area or assign the employee to work in an area away from the alleged victim.



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(8) The head of each facility shall establish a board of inquiry or assign an investigator to receive and investigate all complaints. The board or investigator shall provide a written investigative report to the facility head.

(A) The facility head shall use an investigator or appoint at least five (5) members to the board at regional centers and at least ten (10) members to the board at state operated facilities.

1. The board may be divided into subcommittees of at least three (3) members to carry out its function.

2. At least one non-supervisory, direct care employee may sit on each board or subcommittee.

3. No person may serve on the board or subcommittee if the alleged abuse or neglect occurred on the ward or unit where the employee is assigned.

(B) The investigation may include, but is not limited to, signed written statements or tape recorded interviews from all persons with information regarding the complaint including witnesses, victims, or alleged perpetrators and must include appropriate supporting documents.

(C) State employees shall forfeit their positions as set out in section 36.410 RSMo if they willfully refuse or fail to appear, or having appeared shall refuse to testify or answer questions before the board, investigator or the head of the facility during the investigation.

(D) The investigator or board shall complete the investigative report within thirty (30) working days of the filing of the complaint unless the facility is accredited or certified and the accrediting or certifying body requires less than thirty (30) working days. The standardized report format adopted by the department shall be used.

1. A preliminary report shall be completed if the investigative report cannot be completed within thirty (30) working days due to conditions beyond control of the investigative body (e.g. awaiting outside records such as an autopsy report).

2. The preliminary report will contain the current findings, reason(s) for delay, and the expected completion date of the investigative report.

(9) After receiving the final investigative report, the facility head shall within ten (10) working days do one of the following:

(A) Decide upon appropriate disposition of the matter, or

(B) Request further investigation in which case an additional ten (10) working days may be allowed to complete the investigation and report to the facility head unless the facility head allows for a longer period of time.

(C) If the complaint is unsubstantiated, the facility head shall enter the determination into iITS within one (1) working day of the decision.

(10) If the complaint is substantiated, the facility head shall take the following actions.

(A) Dismiss any employee in accordance with Section 36.380 RSMo with substantiated charge(s) of physical abuse; sexual abuse; class I neglect; misuse of funds/property; two (2) counts of verbal abuse, or two (2) counts of class II neglect, or one (1) count of verbal abuse and one (1) count of class II neglect, within a twelve (12)



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month period. The employee shall be offered the appropriate appeal process as specified in (12) or (13).

(B) Appropriately discipline, according to DOR 6.050, any employee with a substantiated charge of class II neglect or verbal abuse.

(C) The employee shall be notified in written summary of the finding and handed the letter in person if at all possible. The date of the letter should be when the employee is given the letter. When it is not practicable to give the summary to an employee in person, it may be sent to the employee by certified or registered mail, return receipt requested.

(D) The letter provided to the employee must contain:

1. A summary of the action of the employee resulting in the determination;
2. A definition of the charge(s) from section (1);
3. Information listing the specific substantiated charges which disqualify an individual from employment as specified in (10)(A);
4. Information regarding the Personnel Advisory Board appeals right as specified in (12) if applicable;
5. An offer for the employee to meet with the facility head to submit comments or present evidence.
 - a. This meeting must take place within ten (10) calendar days of the date of the letter, unless the parties mutually agree on an extension.

(11) Within ten (10) calendar days of the meeting, or if no meeting was requested, the head of the facility will make a final determination. The employee will be provided written notice of this determination in person or by certified mail. If the charge is substantiated and is a charge listed in (10)(A), and the employee does not have Personnel Advisory Board appeal rights as specified in (13), the letter shall inform the employee they have ten (10) working days following the receipt of the letter to appeal the decision to the department hearings administrator or designee.

(A) The head of the facility shall enter the final determination into iITS whether the complaint is substantiated or unsubstantiated within one (1) working day of the decision.

(B) If the complaint is substantiated, the head of the facility shall submit a final determination form (MO #650-8808) to Central Office in accordance with the iITS procedures within five (5) working days of the final determination decision. A copy of the letters [referenced in (10)(D) and (11)] sent to the employee shall be attached to the final determination form.

(12) An employee who has attained regular status under the Merit System and is suspended without pay for more than five (5) days, is involuntarily demoted, or is dismissed has rights to appeal the disciplinary action to the Personnel Advisory Board (PAB) within thirty (30) calendar days of the effective date of the disciplinary action.

(A) If the PAB upholds the action or no appeal is filed and the action meets the criteria in (10) (A):



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1. The Office of Human Resources shall place the perpetrator's name on the department Disqualification Registry pursuant to section 630.170 RSMo.

2. The perpetrator shall not be employed by the department, nor be licensed, employed or provide services by contract or agreement at a residential facility, day program or specialized service that is licensed, certified or funded by the department.

(13) When the rules of the Personnel Advisory Board do not allow for the appeal of a substantiated charge in (10) (A) (employee does not have regular status, e.g. probationary, unclassified and resigned employees), the employee may appeal the substantiated charge(s) to the department hearings administrator or designee.

(A) The employee has ten (10) working days after receipt of the letter [in (11)] providing them a final determination of substantiated charges of abuse, neglect or misuse of funds/property to appeal the decision to the hearings administrator or designee.

(B) The employee appeals process will be consistent with 9 CSR 10-5.200, sections (7) and (8).

(C) The hearings administrator or designee makes a decision to uphold, reduce or overturn the substantiated charge.

(D) The hearings administrator's or designee's decision will not affect the employee's termination of employment or any disciplinary action taken.

(E) If the hearings administrator or designee upholds the action or no appeal is filed and the action meets the criteria in (10) (A), the Office of Human Resources shall place the employee's name on the department Disqualification Registry pursuant to section 630.170 RSMo.

(F) The perpetrator shall not be employed by the department, nor be licensed, employed or provide services by contract or agreement at a residential facility, day program or specialized service that is licensed, certified or funded by the department.

(14) After the investigation is completed, and after the effective date of any disciplinary action, the facility head shall notify: the parent(s) of a minor consumer; or a consumer's legal guardian(s); or a consumer who is their own guardian of the findings of the investigation, a summary of the facts and circumstances and actions taken, except that the names of any employees or other consumers shall not be revealed.

(15) All plans of action or disposition shall be entered into iiTS within ten (10) working days of the determination.

(16) The complaint and all investigative reports shall be confidential and shall be retained by the head of the facility, except as otherwise provided for in this DOR or by statute.

(A) The parents or other guardian of the consumer who is the subject of such report may submit a written request to the department's General Counsel to obtain a copy of the investigative report.



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(B) Requests for release of the investigative report not applicable to section (A) shall be directed to the office of the Attorney General or the department's office of General Counsel for their review and advice.

(C) The investigative report shall be admissible in any judicial proceeding or hearing in accordance with section 36.390 RSMo, or any administrative hearing before the director of the department or director's designee.

(D) The investigative report shall not be placed in the consumer record.

(17) No director, supervisor or employee of a residential facility, day program or specialized service shall evict, harass, dismiss or retaliate against a patient, resident, consumer, or employee because he or she or any member of his or her family has made a report of any violation or suspected violation of consumer abuse or neglect. Persons committing such retaliation shall be subject to disciplinary action up to and including dismissal.

(18) In March of each even numbered year, the iITS core team shall seek review of this DOR to ensure the processes are followed. Findings and results of the review shall be submitted to the Deputy Director, Office of Quality Management. Recommendations shall be a part of the review.

(19) In March of each even numbered year, the Investigations Program Director shall ensure a report is completed of analysis and trends of the abuse and neglect process and outcomes. The report shall be submitted to the Deputy Director, Office of Quality Management.

(20) Persons who are responsible for implementing this DOR, or for assuring it's implementation, and fail to do so may be subject to disciplinary action.

HISTORY: History: DOR 2.205 Original DOR effective May 1, 1983. Amended May 1, 1984. Amended July 1, 1996. Amended May 2, 2002. Amended August 1, 2002. DOR 2.220 Original DOR effective September 1, 1984. Rescinded and replaced by DOR 2.205 August 1, 2002. Amendment effective December 30, 2003

References:

1. DOR 6.050
2. Sections 36.380, 36.390, 36.410, 630.155, 630.165, 630.167, 630.168, 630.170, 660.250, RSMo.
3. 9CSR 10-5.200